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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,589	03/17/2004	Ronald Bruce Hawkins	50T5731.01	3873
36738	7590	05/30/2008	EXAMINER	
ROGITZ & ASSOCIATES			STRONCZER, RYAN S	
750 B STREET				
SUITE 3120			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92101			2623	
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			05/30/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/802,589	HAWKINS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ryan Stronczer	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 April 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2 and 4-15 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1,2,4-15 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01 April 2008 has been entered.

***Response to Arguments***

Applicant's arguments filed 1 April 2008 have been fully considered but they are not persuasive.

In response to applicant's arguments regarding claims 5 and 13 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the reference "uses metadata for billing") are not recited in the rejected claim(s). Applicant's arguments regarding the use of metadata recited in claims 5 and 13 mischaracterize the scope of the claim as recited; the claim language states that the metadata is only used to indicate a billable event but is not involved in the actual billing process itself, which is carried out by the system logic.

Applicant's arguments with respect to the rejection of claim 8 under 35 USC § 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn; however, upon further consideration, a new ground of rejection is made in

view of Pontenzone and further in view of Asmussen et al. and Errico, as analyzed below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone et al. (Pub. No. US2002/0152278) and further in view of Hori et al. (US Pat. No.: 7,209,942).**

As to the amended subject matter in claim 1, that the database contain data including, "gender, age, income, marital status," Pontenzone, as applied in the previous Office Actions, teaches the recited system but does not explicitly teach the recited demographic data. Hori et al. teaches a method for a search engine to suggest content to a user. Fig. 2D teaches that the system considers the user profile when searching the database, said profile including information including: sex, age, marital status, etc. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system taught by Pontenzone with the user profile and preferences taught by Hori to provide users with content that they are more likely to wish to purchase.

As to claims 2 and 4, the system taught by Pontenzone is intended to be used by any user with Internet access and a web-browser, thus the functionality of claims 2 and 4 are inherent in the system taught by Pontenzone.

**Claims 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone et al. as applied to claim 1 above, and further in view of Hempleman et al. (US Patent No.: 6,243,725), Asmussen et al. (Pub. No.: US2002/0042923), and Errico (Pub. No.: US 2003/0061610).**

As to claims 5 and 13, Pontenzone, as applied to claim 1, teaches a system to create a customized playlist comprising a database and processor, accessing a database containing “heterogeneous multimedia content” and generating a search vector, as recited.

As to the recited “accessing at least one database containing...third party marketing data, demographic data...” Pontenzone teaches, “...*the content delivery management system comprises a reporting module that compiles data based on song content delivered by each of the one or more stations, including data relating to the popularity of specific content with listeners of the stations*” [0011]. Data based on song content delivered by each station is the equivalent of the recited “third party marketing data.” Given that Pontenzone’s system allows for a plurality of listening stations which can be targeted to a specific market or genre, the preference of listeners of a various stations for specific content delivered by those stations can be reasonably interpreted as “demographic data.”

As to the limitation, “wherein the logic comprises allowing a user to select a title from the playlist and if the metadata associated with the title indicates a billable event, billing the user for downloading content associated with the title” recited in claims 5 and 13, Pontenzone teaches a method wherein a user can request a song to be added to the database but does not explicitly teach a method for electronically purchasing said requested content. Asmussen teaches a multimedia content suggestion engine, similar to the search engine taught by Pontenzone in which metadata content associated with a specific multimedia file may contain, “*...a program description, including program rating, program description, video clips, program length, format (e.g., 4.times.3 television or 16.times.9 movies), and other information; billing information and digital rights management information*” [0017]. Further, Hempleman teaches a system for creating a playlist via a user-initiated search request, similar to that taught by Pontenzone. Fig. 6 of Hempleman teaches a “credit card input device” that facilitates the purchase of multimedia content over a network. “*The unit 20 also supervisory and billing services in response to requests by the end user's unit 22 for access to one or more of the works stored in the inventory in the databases 20b*” (Col. 6, Lines 55-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the purchasing functionality taught by Hempleman with the content request functionality taught by Pontenzone to facilitate the purchase of requested content; likewise, it would have been obvious to one of ordinary skill in the art to modify the metadata taught by Pontenzone with the billing information taught by Asmussen to facilitate the purchasing functionality taught by Hempleman.

As to claims 6 and 14, Fig. 6-7 of Hempleman teach methods for accepting payment from a user. Regarding keeping records of transactions, Hempleman teaches, “[r]eport information can be transmitted to the system **20** for billing purposes...as well as making royalty payments to appropriate recipients” (Col. 7, Line 34-39). The system (object **20**) is located remotely from the user and is connected to the terminal via an Internet connection, as shown in Fig. 6-7. As analyzed above the combination of Hempleman with Pontenzone would have been obvious to one of ordinary skill in the art at the time of the invention.

As to claim 7, Asmussen teaches a system which allows a user to search for multimedia content on a digital communication network and which tracks user data. Asmussen teaches, “[a] user database server **511** maintains an aggregator user database **512**, which stores and processes information including, but not limited to, user account data, user profile information, user subscription services, user access rights, and past user search and download data (if authorized by the user)” [0072]. It would have been obvious to one skilled in the art at the time of the invention to incorporate the user database server taught by Asmussen into the system taught by Pontenzone to provide better users of Pontenzone’s system with increased access to available content.

As to claim 8, Pontenzone teaches a method for generating a multimedia playlist based on a user search and allows users to create user profiles or identities that are stored on the network, but does not explicitly teach methods for archiving user search history or for using such archives to generate search results. Asmussen teaches a method for searching content on a digital communications network, including

functionality to generate content suggestions based on user profile data. Regarding the user profile data, Asmussen teaches:

The user profile comprises content search parameters and preferences...such as user account type, user access level, and historical data. The user history analysis report is a summary of statistical analysis of the user's previous account activities that may include previous search requests, returned search results, and content download requests. [0078]

However, Asmussen does not explicitly disclose that the user profile itself can be used as the basis for the search. Errico teaches an audiovisual management system which can autonomously search and record content for users. *"The system, in an autonomous manner...records interest that may be of interest to the user...based on the three description schemes"* [0106]. The "three description schemes" taught by Fig. 1 of Errico are: program description scheme, system description scheme, and user description scheme, the last of which is tied to user information. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the user profile search taught by Asmussen with the autonomous search taught by Errico to allow the system to provide users with search results more closely tailored to their interests. Furthermore, it would have been obvious to use the playlist-generation functionality taught by Pontenzone to compile a playlist consisting of content based on the user profile and search data provided by Asmussen in order to increase product functionality and provide users of Pontenzone's system with access to content they may not have found on their own, thus increasing the customer base of the various "stations" of Pontenzone's system.

Claim 9 recites the method of claim 8, "...without constraining the client device to be a particular single type of device." The systems taught by both Pontenzone and Asmussen are intended for use over the Internet, which can be accessed by users via a wide variety of device types.

As to claim 10, both Pontenzone and Asmussen provide functionality for users to initiate a search.

Claim 11 recites the method of Claim 10, "...wherein the playlist is stored in a database on the network." This functionality is inherent in the system taught by Pontenzone since the playlists generated by Pontenzone are intended to be accessed by many users via the Internet.

As to claim 15 Asmussen teaches that the system is capable of receiving a search request from a user and in paragraph 0078 (cited above) teaches that the system further stores past search requests.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Stronczer whose telephone number is (571) 270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM (EDT), Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on (571) 272-7527. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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